12 and 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al. in view of Spindler et al. and Black et al., and further in view of Brandenburg et al. (U.S. Publication No. 2006/0077904 A1). Claims 13 and 44 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al. in view of Spindler et al. and Black et al., and further in view of Wang (U.S. Patent No. 7,305,422). Claims 14, 16, 45 and 47 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al. in view of Spindler et al., and further in view of Vishnubhotla (U.S. Publication No. 2004/0010505). Claims 15 and 46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al. in view of Spindler et al. and Vishnubhotla and further in view of Gershon (U.S. Publication No. 2005/0027634 A1). Claims 17-18 and 48-49 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al. in view of Spindler et al., and further in view of Naka et al. (U.S. Publication No. 2002/0083238 A1). Claims 19 and 50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al. in view of Spindler et al. and Naka et al., and further in view of Nakajima et al. (U.S. Publication No. 2002/0198870 A1). Claims 20-24 and 51-55 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al. in view of Spindler et al., and further in view of Gotz et al. (U.S. Publication No. 2004/0034699 A1). Claims 25-28 and 56-59 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al. in view of Spindler et al., and further in view of Lipscher et al. (U.S. Publication No. 2004/0102971 A1). Claims 29-31 and 60-62 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al. in view of Spindler et al., and further in view of Odenwalder et al. (U.S. Publication No. 2003/0031149 A1).

The combination of cited prior art references, however, fails to render the claimed invention unpatentable. Each of the claims recites a specific combination of features that

distinguishes the invention from the prior art in different ways. For example, independent claim 1 recites a combination that includes, among other things:

> *"storage means for storing the first plurality of data items, said storage means further storing a second plurality of data items, each data item of the first plurality having assigned a respective one of the data items of the second plurality, each data item of the second plurality representing an individual data item value . . . a processor for continuously updating data items of the second plurality stored in said storage means based upon the received input data, and calculating a data collection value for the data collection based on data item values of the updated data items . . . wherein the apparatus further comprises: a controller for controlling said interface module to connect to one or more of at least two data sources to receive said input data."*

Independent claim 32 recites yet another combination that includes, *inter alia*,

> *"storing the first plurality of data items and a second plurality of data items, each data item of the first plurality having assigned a respective one of the data items of the second plurality, each data item of the second plurality representing an individual data item value . . . connecting to one or more of at least two data sources to receive input data . . . continuously updating stored data items of the second plurality based upon the received input data . . . and calculating a data collection value for the data collection based on data item values of the updated data items."*

Independent claim 63 recites a further combination that includes, for instance,

> *"storing the first plurality of data items and a second plurality of data items, each data item of the first plurality having assigned a respective one of the data items of the second plurality, each data item of the second plurality representing an individual data item value . . . connecting to one or more of at least two data sources to receive input data . . . continuously updating stored data items of the second plurality based upon the received input data . . . and calculating a data collection value for the data collection based on data item values of the updated data items."*

And independent claim 64 recites a further combination that includes, for instance,

> *"a storage unit for storing the first plurality of data items, said storage unit further storing a second plurality of data items, each data item of the first plurality having assigned a respective one of the data items of the second plurality, each data item of the second plurality representing an individual data item value . . . a processor for continuously updating data items of the second plurality stored in said storage unit based upon the received input data, and calculating a data collection value for the data collection based on data item values of the updated data items . . . a controller for controlling said*

interface module to connect to one or more of at least two data sources to receive said input data."

At the very least, the applied references, whether taken alone or in combination, fail to disclose or suggest any of these exemplary features recited in independent claims 1, 32, 63 and 64.

The Examiner has failed to establish a *prima facie* case of obviousness for at least four reasons. First, the Examiner has not demonstrated how the cited prior art references, whether taken alone or in combination, discloses or suggests each and every feature recited in the claims. *See* M.P.E.P. § 2143 (7th ed. 1998). Second, the Examiner has not shown the existence of any reasonable probability of success in modifying the base reference, based on the teachings of the secondary references, in a manner that could somehow result in the claimed invention. *See id.* Third, the Examiner has not identified any suggestion or motivation, either in the teachings of the applied references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the apparatus of the base reference in a manner that could somehow result in the claimed invention. *See id.* Finally, the Examiner has not explained how his obviousness rationale could be found in the prior art — rather than being a hindsight reconstruction of Applicants' own disclosure. *See id.*

Each of the Examiner's factual conclusions must be supported by "substantial evidence" in the documentary record, as required by the Federal Circuit. *See In re Lee*, 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2002). The Examiner has the burden of documenting all findings of fact necessary to support a conclusion of anticipation or obviousness "less the 'haze of so-called expertise' acquire insulation from accountability." *Id.* To satisfy this burden, the Examiner must specifically identify where support is found within the prior art to meet the requirements of 35 U.S.C. §§ 102(b) and 103. In this case, however, the Examiner has failed to satisfy his burden of demonstrating how the primary reference, taken alone or in

combination with the secondary references, can either anticipate or render obvious each and every one of the limitations present in independent claims 1, 32, 63, and 64 as required by the M.P.E.P. and Federal Circuit jurisprudence.

Turning to the Office Action, Fogel et al. discloses an automated data integrity auditing system. Beginning on page 2, paragraph 4 of the outstanding Office Action, the Examiner states that *"Fogel [et al.]discloses an apparatus for use in a real-time financial market portfolio monitoring system, for continuously valuing a data collection comprising a first plurality of data items, the apparatus comprising: storage means for storing the first plurality of data items, said storage means further storing a second plurality of data items, each data item of the first plurality having assigned a respective one of the data items of the second plurality, each data item of the second plurality representing an individual data item value. [0027]"* However, upon review of paragraph [0027] (as directed by the Examiner), Fogel et al. merely discloses:

> *" . . . a method is provided for evaluating a scoring the integrity of data provided by an organization, such as a nursing home, in which coded data is received from the organization. The received data is check for proper coding and completeness. The coded data are then stored in a computer database together with indicators specifying 'bad' (i.e., miscoded or other unusable) data found during the checking step. The stored coded data are then processed in a computer to apply one or more data integrity tests to that portion of data stored in the databases that does not have any indicators of bad data . . . "*

There is no disclosure or fair suggestion (at paragraph [0027] or in the entire disclosure of Fogel et al.) of, at least, a storage means for storing the first plurality of data items, or the storage means for further storing a second plurality of data items, wherein each data item of the first plurality has an assigned respective one of the data items of the second plurality, each data item of the second plurality representing an individual data item value as recited in Applicant's independent claims 1, 32, 63, and 64. At best, Fogel et al. only provides a first

plurality of data items. Even more, Fogel et al. appears to teach away from the claimed invention in that it only provides indicators to selected data (e.g., "bad") and does not truly assign a respective data items from a second plurality of data items to each data item of the first plurality as claimed.

On page 3 of the outstanding Office Action, the Examiner further alleges that *"Fogel [et al.] discloses an interface module for establishing data connections to receive input data. Fogel [et al.] disclose a controller for controlling said interface module to connect to one or more of at least two data sources to receive said input data. [0029]"* However, upon review of paragraph [0029] (as directed by the Examiner), Fogel et al. merely states:

> *"[a] computer program is disclosed for assisting facilities in the completion and submission of required regulatory data. The computer program comprises a routine for checking data provided by the facility for proper coding and completeness in accordance with regulatory requirements. The program also includes a routine for appending indicators to the data. The indicators specify bad data found during the checking step. The data are processed in accordance with the computer program to apply one or more data integrity tests to a portion of the data that does not have any indicators of bad data. The program assigns a score-to the portion of data based on the data integrity test. A report is then generated that identifies the score together with suggestions for resolving any data validity problems located during the data integrity test. The report can be provided to the facility on a real-time basis. In this manner, the facility is able to immediately revise the data in response to the real-time report prior to submission to the regulatory facility."*

There is no disclosure or fair suggestion (at paragraph [0029] or in the entire disclosure of Fogel et al.) of, at least, the interface module or controller as recited in Applicant's independent claims 1 and 64. In fact, on page 3, beginning on line 6 of the outstanding Office Action, the Examiner readily admits *"Fogel [et al.] does not explicitly disclose a processor for continuously updating data items of the second plurality stored in said storage means based upon the received input data, and calculating a data collection value for the data collection based on data item values of the updated data items."*

Furthermore, none of the cited other secondary references directed, for example, to Spindler et al., Matus et al, Black et al., Brandenburg et al., Wang, Vishnubhotla, Gershon, Naka et al, Nakajima et al., Gotz et al., Lipscher et al., and/or Odenwalder et al. cure the above-listed deficiencies of Fogel et al.

In accordance with the M.P.E.P. § 2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 409 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 196 (CCPA 1970). Therefore, it is respectfully submitted that none of the cite prior art references, taken alone or in any proper combination, discloses or suggests the subject matter as recited in claims 1, 32, 63 and 64. Hence, withdrawal of the rejection is respectfully requested.

Each of the dependent claims depend from one of independent claims 1 or 32 and are patentable over the cited prior art for at least the same reasons as set forth above with respect to claims 1 and 32.

In addition, each of the dependent claims also recites combinations that are separately patentable.

In view of the foregoing remarks, this claimed invention, is not rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this response, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

In discussing the specification, claims, and drawings in this response, it is to be understood that Applicant in no way intends to limit the scope of the claims to any exemplary embodiments described in the specification and/or shown in the drawings. Rather, Applicant

is entitled to have the claims interpreted broadly, to the maximum extent permitted by statue, regulation, and applicable case law.

Should the Examiner believe that a telephone conference would expedite issuance of the application, the Examiner is respectfully invited to telephone the undersigned patent agent at (202) 585-8316.

Respectfully submitted,

NIXON PEABODY, LLP

/Marc W. Butler, Reg. #50219/
Marc W. Butler

NIXON PEABODY LLP
CUSTOMER NO.: 22204
401 9th Street, N.W., Suite 900
Washington, DC 20004
Tel: 202-585-8000
Fax: 202-585-8080